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In the Matter of

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Case No. 84-BCA-33

:  
UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS  
OF AMERICA

:  
Contract No. 99-8-358-92-11  
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Kathy L. Krieger, Esq.  
For the Appellant

William H. Walker, Esq.  
For the Respondent

### DECISION OF THE BOARD

This appeal was brought by the United Brotherhood of Carpenters and Joiners of America (UBCJA), a CETA contractor, from a final decision of the U.S. Department of Labor Contracting Officer, dated July 26, 1984. That decision disallowed \$3,105.78 in costs under Contract No. 99-8-358-92-11. The UBCJA has not contested \$1,322.28 of the disallowed costs and has repaid that amount to the Department of Labor (DOL). The issue presented on appeal is whether DOL properly disallowed the remaining costs.

Although the action originally was scheduled for hearing on November 23, 1984, the parties requested and were granted a continuance of the hearing until December 11, 1984. On December 7, 1984, however, the parties agreed, with the Board's concurrence, that the case should be submitted on the record without a hearing, with the opportunity to file briefs.

On February 5, 1985, the Board received the UBCJA's Brief in Support of Appeal. On February 6, 1985, DOL submitted its brief, and on February 15, 1985, DOL submitted its reply brief.

The findings and conclusions that follow are based upon an analysis of the entire record, applicable statutes, regulations, and case law.

### STATEMENT OF THE CASE

#### The Contract

This case arises from the activities of Mr. Michael R. McEnaney, who was employed as the CETA Area Coordinator for UBCJA during 1978 and 1979.

DOL had contracted with UBCJA to run a nationwide CETA training program, agreeing to pay the salaries and expenses of UBCJA members who were involved in administering the training program. At all times pertinent to this case, UBCJA was a prime contractor under Agreement #99-8-358-92-11 with DOL's Employment and Training Administration. (AF-26).<sup>1</sup>

As a CETA Area Coordinator, Mr. McEnaney's salary and expenses were reimbursed by DOL to UBCJA. His responsibilities as Area Coordinator included providing technical assistance to, and monitoring training programs in the States of Alaska, Washington, Oregon, and Montana. Most of his assignments were given by the national office of UBCJA. His work required extensive travel.

Mr. McEnaney was required to submit weekly travel vouchers to UBCJA's national office. These vouchers consisted of a form claiming monetary expenditures and an attached memo, called a weekly report, which outlined his daily activities for the week.

### The Contractor's Performance

The investigation in this case was triggered by a letter dated September 16, 1981, from Mr. McEnaney's former wife, Lila L. Stevens. (AF-18; A-2). In this letter, which Ms. Stevens sent to the Department's Office of Inspector General (OIG), she accused Mr. McEnaney of filing false travel vouchers from June 1978 to September 1979.<sup>2</sup>

OIG conducted a series of interviews from November 9, 1981 through August 17, 1982. (A-3, 4, 6 & 7).

During her interview on November 9, 1981, Ms. Stevens provided copies of Mr. McEnaney's weekly vouchers for the period June 1978 to April 1979, as well as information concerning Mr. McEnaney's bank and credit accounts. (A-3).

OIG agents interviewed Mr. McEnaney on July 13, 1982. (A-4). Mr. McEnaney explained that after his then wife, Lila, typed his weekly reports, he would sign them. He also stated that he was a stickler for turning in his reports on time, and that sometimes he completed the reports before he left on a trip so that he could mail them by Friday. When asked about the charges for clerical assistance that appear on his vouchers Mr. McEnaney stated that the hours he claimed were accurate - his wife had worked at least six hours per week. The vouchers were signed by both Mr. McEnaney and his former wife. (A-1). Mr. McEnaney further stated that his wife did not consider the weekly

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<sup>1</sup> The following abbreviations will be used when citing to the record:

AF - Appeal File  
A - Attachment

<sup>2</sup> She also alleged that these actions occurred in connection an escapade carried on by Mr. EcEnaney while in Spokane, Washington. (A-2).

clerical payments adequate because the work required more than six hours; she repeatedly asked him to put in for more time.

When asked about some discrepancies concerning per diem payments, Mr. McEnaney was less certain about their accuracy. For instance, he had difficulty explaining the fact that his weekly reports show travel to Corvallis, Oregon on May 31, 1978, travel to Portland, Oregon on June 1, 1978, and travel to home on June 2, 1978, while the Red Lion Motor Inn at Spokane, Washington has receipts for his overnight stay on June 1 and 2. Spokane, Washington is between 23 and 40 miles from Mr. McEnaney's home in Coer d'Alene, Idaho.<sup>3</sup>

Mr. McEnaney admitted having stayed at the Spokane Red Lion Motor Inn on June 1 and 2, stating that he liked the Spokane area and wanted an opportunity to do his paperwork. He could not remember whether this weekly report had been typed prior to his trip or whether he had falsified the voucher. He also admitted that the claim of travel day on June 2 was false, and that he should have listed general office work or partial travel day.

Mr. McEnaney admitted that he sometimes had falsified his vouchers to exclude the stays in Spokane to prevent his wife from learning that he had stayed in Spokane. He emphasized that he had no intent to defraud the government and felt that he was entitled to the per diem anyway, although he admitted that he could see how it looked like he was putting in false vouchers to obtain per diem.

Similar Spokane stays and falsifications occurred during the following periods: June 12, 1978 through June 15, 1978; July 24, 1978 through July 28, 1978; August 23, 1978 through August 25, 1978; September 11, 1978 through September 15, 1978; October 10, 1978 through October 12, 1978; October 18, 1978 through October 19, 1978; November 1, 1978 through November 3, 1978; December 20, 1978 through December 22, 1978; February 26, 1979 through February 27, 1979; March 13, 1979 through March 15, 1979; April 10, 1979 through April 14, 1979; and the week before the weekly report of May 12, 1979.

UBCJA has expressed its displeasure over the fact that no documentation to substantiate the information possessed by the OIG agents was shown to Mr. McEnaney. That Mr. McEnaney in fact performed the business activities in the various locations on the days he claimed is not disputed, and DOL has not questioned any portion of his salary for those days.

Subsequent to Mr. McEnaney's interview, Ms. Stevens submitted a letter in which she denied having performed any typing work for Mr. McEnaney during 1978 and 1979. Ms. Stevens asserted that after March 1977, Mr. McEnaney either performed the typing work himself or used someone else to do it, but that Ms. Stevens signed the clerical vouchers. (A-5). On August 16, 1982 OIG agents reinterviewed Ms. Stevens. (A-6). During the interview Ms. Stevens was shown the weekly clerical expense vouchers she had signed during the period January 1978 to April 1979. (A-1, 6). She stated that she had not done the typing work, but that she had signed the statements because the work was being performed. (AF-19; A-6).

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<sup>3</sup> Ms. Stevens alleges the distance is only 23 miles, while Mr. McEnaney asserts that it is 40 miles.

On November 1, 1983, OIG filed an Investigative Memorandum containing the details of the investigation of Mr. McEnaney's activities. (AF-18-25). On December 15, 1983, the Memorandum was transmitted to the Employment and Training Administration's (ETA) Office of Special National Level Programs, and on March 27, 1984, it was issued to ETA's Division of Financial Policy, Audit, and Closeout for resolution.

The Contract Officer reviewed the matter and on July 26, 1984 issued a final decision disallowing \$3,106 in costs associated with Mr. McEnaney's activities. (AF-6-10).

UBCJA appealed the final decision of the Contract Officer to the Board of Contract Appeals of the United States Department of Labor on July 31, 1984. (AF-3). On September 6, 1984, UBCJA filed a complaint with the Board of Contract Appeals, attaching a check in the amount of \$1,322.28, which reflected that portion of the costs disallowed by the Contract Officer that UBCJA did not question. The balance of \$1,783 that UBCJA continues to dispute consists of \$1,643 in clerical expenses and \$140 in per diem charges.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Clerical Expenses

In his final decision, the Contract Officer disallowed \$1,843 for clerical expenses, that he found were charged but not incurred. (AF-10). Of that amount, UBCJA paid \$199.50 for the seven weeks between May 31, 1978 to March 17, 1979 for which Ms. Stevens did not sign vouchers. In its brief in Support of Appeal, UBCJA stated that it does not contest two other weeks within that period--January 27, 1979 and February 3, 1979 --totalling \$57.00.

UBCJA also argued that the figure of \$1,843.00 is incorrect because DOL relied on sixty-two vouchers totaling only \$1,729.20. As evidenced by the Appeal File Supplement, however, DOL relied on sixty-six vouchers totaling \$1,843.20, which was rounded off to \$1,843.00.

UBCJA also objected to the Contracting Officer's disallowance of \$703.20 in clerical payments as falling outside the period of time covered by the investigation, May 31, 1978 through March 17, 1979. The OIG investigation, however, was a continuing one, and the Contracting Officer was not bound by any time period.

Further, UBCJA argued that DOL has not established facts warranting disallowance of the clerical expenses, because Mr. McEnaney stated that his wife did the clerical work an average of six hours per week. Moreover, she regularly signed vouchers for the work and produced the records for the investigation. We find this argument unpersuasive because Ms. Stevens' discovery of these materials came only after she became suspicious that her husband was avoiding returning to his home in Idaho, instead of staying in Spokane, Washington. She did not allege any falsification of vouchers and did not produce evidence showing that the clerical work had not been done. UBCJA stated that Mr. McEnaney's assertion that he falsified some of his weekly reports to deceive his wife is consistent with his assertion that she performed clerical work for him.

UBCJA also claimed that Ms. Stevens impugned her own credibility by admitting that she repeatedly signed vouchers for the clerical work that she claims she did not do. We find, however, that UBCJA has not met its burden under the contract of proving the allowability of the clerical expenses. (Af-27, C1. 51). The clerical vouchers alone, certainly under these circumstances, are not adequate to meet the Contractor's burden of sufficiently documenting the allowability of the expenses. Although Mr. McEnaney has asserted that the clerical expense vouchers are for work performed by his wife, thirteen vouchers do not contain Ms. Stevens' signature. (A-1).<sup>4</sup>

UBCJA has not refuted with any concrete evidence Ms. Stevens' assertion that she did not type any vouchers or letters for Mr. McEnaney during 1978 or 1979. (A-5, 7). Ms. Stevens had explained that she signed some vouchers even though she had not done the clerical work because Mr. McEnaney made it seem like he was doing her a favor by performing her job. (A-6). She further explained that she ceased doing any work for Mr. Mc Enaney after March 1977 because she went to work herself. She also emphasized that she did not at any time perform more than one or two hours of clerical work per week for Mr. McEnaney. (A-6). I find the statements of Ms. Stevens to be more credible than the statements of Mr. McEnaney, who was less certain and clear about both the vouchers and his weekly reports. (A-4). More significant, Mr. McEnaney has even admitted that all along he intended to conceal the truth from his wife. Given this admission, the reliability of his statements during the OIG interview is doubtful.

Because the Contractor did not adequately rebut the evidence that Mr. McEnaney filed false vouchers in 1978 and 1979, the Contract Officer's decision disallowing \$1,843.00 in clerical expenses is upheld.

#### Per Diem Payments

The Contracting Officer disallowed \$525.00 in per diem charges for days when Mr. McEnaney was within commuting distance from his home. The record indicates that on at least fifteen separate occasions Mr. McEnaney submitted travel vouchers for reimbursement on a \$35.00 per diem basis for staying overnight in Spokane, Washington, a short distance from Mr. McEnaney's residence in Idaho. (AF-24-25).

The disputed per diem payments of \$140.00 comprise two \$35.00 payments for overnight stays including a travel day the next day, claimed by Mr. McEnaney during the week ending July 29, 1978 (AF-24); a \$35.00 payment for one overnight stay during the week ending March 3, 1979 (AF-25); and a \$35.00 payment for an overnight stay during the week ending March 17, 1979. (AF-25). The Director of Area Job Corps Coordinators for UBCJA, Mr. James Tinkcom, told OIG interviewers that it would be improper for an Area Coordinator, who spent the night thirty miles from home, to claim the following day as a travel day. (A-7).

UBCJA submits that the Contract Officer's disallowance of \$70.00, or the two days of per diem on July 24 and 25, 1978, was not sufficiently documented. Mr. McEnaney's weekly report and voucher reflects travel to and performance of services at various locations in and around Pasco,

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<sup>4</sup> Significantly, the Contractor has reimbursed DOL \$199.50 for seven unsigned receipts during May 31, 1978 through March 17, 1979.

Washington on July 24 and 25, without stating the location of overnight stays for those two days. UBCJA objects to the lack of documentation to show that Mr. McEnaney had stayed overnight in Spokane on those two evenings. UBCJA, however, has misconstrued the contract provisions requiring the Contractor to establish the allowability of the costs. (AF-27, C1. 5). Further, DOL produced a receipt from the Spokane Red Lion Motor Inn evidencing Mr. McEnaney's stay on those two days.

According to the Federal Procurement Regulations, 41 C.F.R. §1-15.201-205, allowable costs must be reasonable. Section 1-15.201-3 elaborates on the definition of "reasonableness":

A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business.

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In determining the reasonableness of a cost, consideration shall be given to . . . [t]he action that a prudent businessman would take in the circumstances, considering his responsibilities to the owners of the business, his employees, his customers, the Government, and the public at large.

41 C.F.R. §1-15.201-3.

I find that under this "prudent person" test, Mr. McEnaney's overnight stay in Spokane on July 24, 1978 and July 25, 1978 is not an action a prudent business person would take, because Mr. McEnaney could have easily avoided the necessity of a per diem charge by staying at his home, only a short distance away. I also find that Mr. McEnaney's stay in Spokane is sufficiently documented in the form of a signed credit card receipt. Thus, the Contract Officer's disallowance of per diem expenses for July 24 and 25 of 1978 was proper.

With respect to the \$35.00 per diem during the week of March 3, 1979, Mr. McEnaney's voucher and weekly report reflect work in Baker, Oregon on February 26 and 27, and overnight stays in Spokane on February 26 and 27 prior to a 7:15 a.m. flight out of Spokane airport on February 28. UBCJA disputes the disallowance of this per diem payment because, it stated, it is not clear which of the two overnight stays was disallowed. If the disallowance was for February 27, UBCJA contests such a disallowance where Mr. McEnaney had to board an early flight from the Spokane Airport the next morning. According to UBCJA under the prudent business person test, such a per diem charge would be proper. DOL produced, however, a Motel receipt for February 26, showing Mr. McEnaney's stay in Spokane. Under the prudent business person standard, Mr. McEnaney should not have stayed overnight in Spokane on February 26, 1979.<sup>5</sup> Thus, the Contracting Officer's decision disallowing \$35.00 in per diem costs for February 26, 1979 is upheld.

Finally, UBCJA contests the disallowance for per diem costs in connection with business and travel to and from Phoenix, Arizona on March 13-15, 1979. Due to some confusion as to the precise

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<sup>5</sup> We find that even if Mr. McEnaney had claimed per diem for his overnight stays on February 27, 1979, and March 12, 1979, his early flights the next mornings would not have justified his spending the nights in a motel only a short distance from his home.

dates, UBCJA appealed this disallowance, assuming it had been for a March 12 overnight stay in Spokane. Subsequently, DOL produced a motel receipt for the evening of March 14, and UBCJA indicated that if that is the date for which per diem is disallowed, it would not contest the disallowance. We find that under the applicable standard, such a per diem allowance is not proper, and therefore, the Contract Officer's disallowance as to the March 14 per diem is affirmed.

In sum, UBCJA did not meet its burden of sufficiently documenting the allowability of the per diem costs or of showing that a prudent business person reasonably would have incurred such costs. Thus, the Contract Officer properly disallowed \$525 in per diem charges for dates when Mr. McEnaney was within commuting distance of his home, including the \$140.00 in the per diem costs that were disputed in this appeal.

### ORDER

The appeal as to \$1,643.00 in clerical expenses and \$140.00 in per diem costs is DENIED.

GLENN ROBERT LAWRENCE  
Member, U.S. Department of Labor  
Board of Contract Appeals

I concur:

NAHUM LITT  
Chairman, U.S. Department of Labor  
Board of Contract Appeals

I concur:

SAMUEL B. GRONER  
Member, U.S. Department of Labor  
Board of Contract Appeals

Dated: FEB 18 1986  
Washington, D.C.

GRL:kj:crg